

NOT FOR PUBLICATION

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DONALD E. BOYD,

Plaintiff,

v.

JOHN DOE DOCTOR, *et al.*,

Defendants.

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Civ. Action No. 07-769 (FSH)

ORDER

Date: February 3, 2010

Plaintiff Donald E. Boyd, appearing *pro se*, appeals the November 16, 2009 Order of Magistrate Judge Schwartz (the “Order”), denying Plaintiff’s application to substitute the names of three doctors for fictitiously named defendants in the Complaint; and the Court having reviewed the Order, and the submissions of the parties pursuant to Fed. R. Civ. P. 78; and

it appearing that Judge Schwartz denied Plaintiff’s request because: (1) Plaintiff failed to provide a copy of his proposed amended pleading with his application, as is required by L. Civ. R. 7.1(f); (2) Judge Schwartz found that Plaintiff’s delay in seeking the amendment “prejudices the other parties as they are unable to investigate the new claims . . . particularly since discovery closed on October 13, 2009;” and (3) the Final Pre-Trial Order was entered on November 2, 2009, but “Plaintiff made no mention of these proposed defendants” in his narrative statement of facts incorporated in that Order, and amendments to the Final Pre-Trial Order are only permitted upon a showing of manifest injustice; and

it appearing that by Order dated December 17, 2009, this Court ordered that discovery be re-opened for the Defendants named in the First Amended Complaint, and that the Final Pre-Trial Order be vacated; and

it appearing that Plaintiff attached a copy of his proposed amended pleading (the “Second Amended Complaint”) to his appeal papers, and that the only change between the Second Amended Complaint and the First Amended Complaint is the substitution of Dr. Hershkowitz, Dr. Samuel Sostre, and Ms. Alexis Fitzsimons for the fictitiously named defendants; and

it appearing, therefore, that Magistrate Judge Schwartz’s reasons for denying Plaintiff’s application are now moot; and

for good cause shown;

IT IS on this 3rd day of February 2010,

ORDERED that the November 16, 2009 Order by Magistrate Judge Schwartz [Docket No. 60] is **VACATED**, and Plaintiff’s application for leave to file the Second Amended Complaint to substitute the names of certain defendants is **GRANTED**; and it is

FURTHER ORDERED that the Clerk shall file the Second Amended Complaint [Docket. No. 72-2]; and it is

FURTHER ORDERED that pursuant to 28 U.S.C. § 1915(d), the Clerk shall issue summons for the new Defendants, Dr. Hershkowitz, Dr. Samuel Sostre, and Ms. Alexis Fitzsimons, and the United States Marshal shall serve summons and copies of the Second Amended Complaint upon Defendants Dr. Hershkowitz, Dr. Samuel Sostre, and Ms. Alexis Fitzsimons, as well as Defendants Lt. Stio, Paul Acakios, Brian Pell, Chris Sloma, Michael Laplace, Officer Bracero, Officer Dixon, Dolores Guida, Joann Parker, and Nurse P. Panzer, with

all costs of service advanced by the United States.¹

/s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.

¹ Plaintiff is reminded that he must complete U.S. Marshal form 285 for each named Defendant to be served. The completed forms **shall** be returned to the U.S. Marshal's Office by **February 26, 2010** at the following address:

UNITED STATES MARSHAL'S OFFICE
50 Walnut Street
Room 2009
Newark, NJ 07101